IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

THURSDAY, THE 29TH NOVEMBER 2007 / 8TH AGRAHAYANA 1929

WP(C).No.23423 of 2006(S)

OA.637/2003 of CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH
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PETITIONERS:
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1. UNION OF INDIA, REPRESENTED BY THE SECRETARY, MINISTRY OF AGRICULTURE, DEPARTMENT OF ANIMAL HUSBANDRY & DAIRYING, KRISHI BHAVAN, NEW DELHI-1.

2. THE DIRECTOR, INTEGRATED FISHERIES PROJECT, KOCHI-16.

BY ADV. SRI.P.PARAMESWARAN NAIR, CGC

RESPONDENTS:
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1. N.K. KRISHNAN KUTTY, ASSISTANT FOREMAN, (ENGINE & EQUIPMENTS), INTEGRATED FISHERIES PROJECT, KOCHI-16.

2. AUGUSTINE JOSEPH, ASSISTNT FOREMAN, (ENGINE & EQUIPMENTS), INTEGRATED FISHERIES PROJECT, KOCHI-16.

3. K.R. KUTTAPPAN, ASSISTANT FOREMAN, (STRUCTURAL), INTEGRATED FISHERIES PROJECT, KOCHI-16.

4. K. CHANDRAN LOUIS, ASSISTANT FOREMAN (STRUCTURAL), INTEGRATED FISHERIES PROJECT, KOCHI-16.

5. K.K. GOPI, ASSISTANT FOREMAN (MECHANIC SHOP), INTEGRATED FISHERIES PROJECT, KOCHI-16.

BY ADV. SRI.T.NIKLAVU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXTS:-

EXT.P1:- TRUE COPY OF O.A. NO.637/03 OF THE CAT, ERNAKULAM BENCH DT.24/07/03.

EXT.P2:- TRUE COPY OF THE REPLY STATEMENT FILED BY THE PETITIONERS HEREIN IN O.A. NO.637/03 DT.09/03/05.

EXT.P3:- TRUE COPY OF THE ORDER DT.17/11/05 IN O.A NO.637/03 OF THE CAT, ERNAKULAM.

//TRUE COPY//

K.Balakrishnan Nair &
K.P.Balachandran, JJ.

W.P.(C)No. 23423 of 2006 S

JUDGMENT

Balakrishnan Nair, J.

The petitioners are the respondents in O.A.No. 637/03 before the Central Administrative Tribunal, Ernakulam Bench. The applicants in the said original application are the respondents.

2. The respondents/applicants approached the Central Administrative Tribunal by filing the above original application feeling aggrieved by the scale of pay granted to them by the Government in implementation of the V Central Pay Commission report. All the petitioners are Assistant Foreman in the Integrated Fisheries Project. They are promotees. The revised scale of pay as per the V Central Pay Commission report is Rs.4500-7000. Their counter parts in other Departments were granted the scale of pay of Rs.5000-8000. Feeling

aggrieved by the said discrimination, they approached the Central Administrative Tribunal.

3. The Central Administrative Tribunal found that earlier, the Processing Assistants, working in the Integrated Fisheries Project, approached the Central Administrative Tribunal by filing O.A.No. 1323/92, when the IV Central Pay Commission report was implemented. Their scale of pay was lower when compared to that of Assistant Foreman. The said original application was allowed. When this time the V Central Pay Commission was implemented, the scale of pay of the Processing Assistants was revised as Rs.5000-8000. But, the scale of pay of the Assistant Foreman was revised as Rs.4500-7000. In O.A.1323/92 the Tribunal held that those two posts should be treated at par for the purpose of grant of pay, having regard to their nature of duties, functions and qualifications. Following the said decision in that original application, which has become final, the Central Administrative

Tribunal, this time, held that the scale of pay of Assistant Foreman should be equal to that of the Processing Assistants. Based on that reasoning, the original application was allowed. The petitioners attack the said finding in this writ petition.

4. According to the petitioners, the qualifications of the applicants are only ITI and seven years experience. For direct recruitment, as per the Recruitment Rules, the qualification to the post of Assistant Foreman is Diploma in Engineering. Direct recruitment is permissible if only no qualified candidate is available for promotion. So far, direct recruitment has not been made to the post of Assistant Foreman, it is submitted. The petitioners, relying on Annexure-A1 of Exhibit P1 original application, submitted that the qualification for direct recruitment to the post of Technical Supervisors in workshops is Diploma in Engineering in the relevant discipline

or graduation in Science. Keeping the said qualification in mind, the scale of pay was recommended. Annexure-A2 of Exhibit P1 application would also show that Technicians with degree in Science or Diploma in Engineering are eligible to get the scale of pay of Rs.5000-8000. According to the petitioners, since the applicants do not have the above said qualification, they are not eligible to get the scale of pay of Rs.5000-8000. So, the order of the Central Administrative Tribunal is unsustainable, it is submitted.

5. We notice that the claim of the applicants has been rejected by Annexure-A5 of Exhibit P1 original application on the ground that the qualification for direct recruitment to the post of Assistant Foreman is not Diploma in Engineering. But, the said stand, taken to reject the claim of the applicants, is plainly untenable. As per the Recruitment Rules, the qualification for direct recruitment to the post of Assistant Foreman is

Diploma in Mechanical Engineering with two years experience. Though the petitioners are promotees, the scale of pay is determined with reference to the qualification for direct recruitment, which is evidently Diploma in Engineering. In a particular post there cannot be two scales of pay, for promotees and the direct recruitees, on the basis of the difference in the qualification, prescribed for promotion and direct recruitment. Therefore, we are of the view that the stand taken by the Central Administrative Tribunal in the impugned order is perfectly legal and valid.

6. We also notice that as per Annexure-A5, their claim was rejected on a particular ground, i.e., the qualification for direct recruitment to the post of Assistant Foreman is not Diploma in Engineering. When that order is under challenge before this Court, they cannot try to support that order on certain other grounds. The same is impermissible in law in view of the decision of the

Apex Court in **Mohinder Singh Gil v. Chief Election Commissioner** (AIR 1978 SC 851).

In the result, there is no merit in this writ petition. Accordingly, it is dismissed.

(K.Balakrishnan Nair, Judge)

29th November, 2007

(K.P.Balachandran, Judge)

tkv